

Message Text

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ACTION L-02

INFO OCT-01 ARA-06 ISO-00 EB-07 COME-00 CIAE-00 INR-07

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FM AMEMBASSY LIMA

TO SECSTATE WASHDC 3861

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E.O.11652: N/A

TAGS: EINV, PE

SUBJ: CALVO CLAUSE AND RELATED PROVISIONS

REFS: STATE 024007, LIMA 9579, LIMA 9615, LIMA 9647

1. ARTICLE 17 OF PERUVIAN CONSTITUTION OF 1933 READS, IN PART, "COMMERCIAL COMPANIES, EITHER LOCAL OR FOREIGN, ARE SUBJECT, WITHOUT RESTRICTION, TO THE LAWS OF THE REPUBLIC. IN EVERY CONTRACT BY THE STATE WITH FOREIGNERSTHERE MUST BE AN EXPRESS SUBMISSION BY THE SECOND PARTY TO THE LAWS AND COURTS OF THE REPUBLIC AND ITS RENUNCIATION TO ANY DIPLOMATIC CLAIM."

2. THIS ARTICLE WAS CENTRAL POINT OF RECENT CONTROVERSY (SEE LIMA REFTELS) WHEN LIMA BAR ASSOCIATION CLAIMED THAT RECENTLY SIGNED CONTRACTS FOR CONSTRUCTION OF OIL PIPELINE IN NORTHERN PERU WERE UNCONSTITUTIONAL AS THERE WERE FOREIGN ARBITRATION CLAUSES INCLUDED IN THEM. GOP POSITION WAS THAT SECOND SENTENCE OF ARTICLE IS MODIFIED BY FIRST. THUS, PROHIBITION AGAINST RENUNCIATION OF PERUVIAN SOVEREIGNTY DOES NOT APPLY WHEN COMPANIES AND THEIR ACTIVITIES ARE DEEMED TO BE OUTSIDE OF PERUVIAN TERRITORIAL LIMITS. ARTICLE 17 WAS INVOKED BY MILGOVE AFTER ITS OCTOBER 1968 EXPROPRIATION WITHOUT COMPENSATION OF INTERNATIONAL PETROLEUM COMPANY. IPC WAS DENIED ANY RECOURSE OUTSIDE PERUVIAN COURTS.

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3. MILGOV FOLLOWS TRADITIONAL PERUVIAN POSITION OF
OPPOSITION TO ANY TYPE OF FOREIGN INVESTMENT INSURANCE
FOR WAR RISKS OR EXPROPRIATION. OPIC HAS NOT WRITTEN
INSURANCE IN PERU FOR SIX YEARS, AND BEFORE THAT ONLY
FOR GUARANTEE OF CONVERTIBILITY, ALTHOUGH AN OPIC
AGREEMENT WITH PERU HAS NEVER BEEN TERMINATED.

4. COMMENT: PERU ADHERES CLOSELY TO "CALVO DOCTRINE"
BUT, AS NOTED IN PARA 2 ABOVE, WHEN IT DEEMS ITS NATIONAL
INTEREST GREATLY AFFECTED, THIS ADHERENCE MAY BE
MODIFIED.
DEAN

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